Luis Gaytan
803 Meadow View Ave.
El Centro, California 92243
Telephone: (760) 352-7601

Plaintiff Appearing In Pro. Per.

FILED
'07 DEC 17 PM 3: 01
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUIS GAYTAN, Plaintiffs, vs. CITY OF BRAWLEY, OFFICER TORRES, DOE 1 though DOE 100, inclusive, Defendants.	Case No. '07 CV 2353 L BLM **COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

INTRODUCTION

1. This is a complaint for money damages by Luis Gaytan against the City of Brawley, Officer Torres of the Brawley Police Department, and other individuals whose identities are currently unknown for the violation of his Constitutional rights of liberty and privacy, due process of law, the unlawful assault, battery, false imprisonment, and intentional infliction of emotional distress.

2. Plaintiff alleges that the true identities of Does 1 though 100, are currently unknown to Plaintiff, but were responsible for Plaintiff's injuries based on direct and indirect participation of all acts described herein, and all defendants acted in concert with each other and were in legal relationship with one another at all relevant times, such as agency and employment, and each defendant aided and abetted each other defendant, thereby causing each defendant to be responsible for the unlawful conduct of each other defendant.

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JURISDICTION

3. This action is brought pursuant to 42 U.S.C. sections 1981, 1983, 1985, 1986, 1988 and 12133, and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. sections 1331 and 1341(3) and (4), and the aforementioned constitutional and statutory provisions. Plaintiff further invokes the pendant jurisdiction of this Court pursuant to 28 U.S.C. section 1367 to hear and decide claims arising out of state law.

VENUE

4. Venue is proper because all acts mentioned herein occurred within the Southern District of California, and witnesses, defendants, and evidence predominate within the Southern District of California.

PARTIES

5. Luis Gaytan is and was at all times relevant herein citizens of the United States and resident of the State of California, county of Imperial.

6. At all relevant times, the City of Brawley employed Officer Torres and Does 1 through 100 through, inclusive, as public servants.

7. The City of Brawley and Does 51 through 100, inclusive, were responsible for hiring, training, supervising, and disciplining, Officer Torres and Does 1 through 50, inclusive.

8. At all relevant times, all defendants were acting under color of authority and law and within the course and scope of their employment.

9. At all relevant times, all defendants' conduct was intentional, malicious and outrageous thereby entitling plaintiff to recover punitive damages against all non-government entity defendants.

FIRST CAUSE OF ACTION AGAINST OFFICER TORRES, AND DOES 1 THROUGH 50 FOR VIOLATING PLAINTIFF'S FOURTH AMENDMENT GUARANTEE TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE (PHYSICAL RESTRAINT OF LUIS GAYTAN)

10. Plaintiff incorporates by reference paragraphs 1 though 9 as if though fully laid out

herein.

12. On or about August 1, 2006, Plaintiff was at a rental property he owned located at 986 E Street, Brawley, California.

13. At the time of the incident, Plaintiff was at the property to collect rent from a tenant. Also present was the tenant's girlfriend. While making a request for the rent, the tenant's girlfriend threw a punch at Plaintiff, which Plaintiff blocked by raising his left hand outward to shield himself from the attack. The tenant then removed then removed his girlfriend from the scene. A maintenance man, hired by Plaintiff, was present during the altercation.

14. Approximately one-half hour later, Officer Torres arrived at the location and instructed Plaintiff to place his hands against his back and informed Plaintiff that he was under arrest for assault and battery. Officer Torres grabbed Plaintiff, placed handcuffs on Plaintiff, and removed him from his property without Plaintiff's consent.

15. Although the maintenance man employed by Plaintiff attempted to relay to Officer Torres what had happened, Officer Torres wasn't taking the time to listen to him.

16. Plaintiff's arrest was witnessed by two other individuals who Plaintiff hired to do maintenance work on his property.

17. Officer Torres was previously in a dating relationship with the tenant's girlfriend and arrested Plaintiff without conducting any investigation as a personal favor to his friend, the tenant's girlfriend.

18. At all times, the force used against Plaintiff was excessive and unreasonable from the totality of the circumstances.

19. After arresting Plaintiff, Officer Torres placed him in the front seat of his police vehicle and drove him through the City of Brawley on the way to jail. This was done to advertise to the community that Plaintiff had been arrested to humiliate Plaintiff.

20. Plaintiff was jailed and eventually released the same day. Following a supplemental investigation by a supervisor of Officer Torres, it was determined that there was a lack of credible evidence that Plaintiff committed a criminal offence and all credible evidence established that Plainitff was acting within the law at all times and no criminal charges were

brought against Plaintiff.

21. The assault, battery, arrest and imprisonment of Plaintiff was a violation of the Plaintiff's legitimate expectation of liberty and privacy guaranteed by the Fourth and Fourteenth Amendments of the U.S. Constitution.

22. As a result of the foregoing, Plaintiff has suffered physical injuries, pain and suffering, severe emotional distress, lost wages, and was deprived of his liberty, privacy and constitutional rights. Plaintiff's injuries are ongoing.

SECOND CAUSE OF ACTION AGAINST OFFICER TORRES AND DOES 1 THROUGH 50 FOR VIOLATING PLAINTIFF'S FOURTEENTH AMENDMENT GUARANTEE TO DUE PROCESS OF LAW

23. Plaintiff incorporates by reference paragraphs 1 though 22 as if though fully laid out herein.

24. The assault, battery, detention and humiliation of Plaintiff by Officer Torres and Does 1 through 50, inclusive, was in the nature of summary punishment and violated Plaintiff's right not to be deprived of life, liberty or property without due process of law guaranteed by the Fourteenth Amendment of the U.S. Constitution.

25. By reason of the above, Plaintiff has suffered the expense of retaining an attorney, suffered severe emotional distress, and suffered the aforementioned injuries.

THIRD CAUSE OF ACTION AGAINST THE CITY OF BRAWLEY, AND DOES 51 THROUGH 100, INCLUSIVE, FOR VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHTS BY SETTING UNCONSTITUTIONAL RULES, REGULATIONS, GUIDELINES AND POLICES THAT CAUSED OFFICER TORRES AND DOES 1 THROUGH 50, INCLUSIVE, TO VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS

26. Plaintiff incorporates by reference paragraphs1 through 25 as if though fully laid out herein.

27. The City of Brawley, and Does 51 through 100, inclusive, are final decision makers pursuant to authority granted to them by the City of Brawley to set and oversee the Brawley Police Department rules, regulations, guidelines, and policies that relate to the hiring, training,

disciplining, and retaining of public servants employed by the Brawley Police Department in general and Officer Torres, and Does 1 through 50, in particular.

28. The City of Brawley, and Does 51 through 100 are aware that there exists persistent and widespread customs and practices regularly followed by public servants employed by the Brawley Police Department in general and Officer Torres, and Does 1 through 50 in particular. The customs and practices include conduct that violates the civil rights of the general public and Plaintiff.

29. The City of Brawley, and Does 51 through 100, were deliberately indifferent and grossly deficient in creating, managing, and funding programs that relate to the hiring, training, disciplining, and retaining of police officers in general and Officer Torres, and Does 1 through 50 in particular in particular. As a result of the deliberate indifference and gross deficiency, (1) Officer Torres, and Does 1 through 50 were ill trained in (a) peace officer practices and procedures, (b) conduct becoming of a peace officer, and (c) constitutional limitations on law enforcement conduct, (2) Officer Torres, and Does 1 through 50 were improperly hired, disciplined, and retained as Brawley Police Officers, and (3) Officer Torres, and Does 1 through 50 abused their authority as police officers by systematically breaking the law and injuring members of the public with de facto immunity.

30. As a direct and proximate result of the deliberate indifference and gross deficiency of the City of Brawley, and Does 51 through 100 for the adoption and promulgation of the police department rules, regulations, guidelines and policies, the constitutional rights of Plaintiff was violated by Officer Torres and Does 1 through 50.

31. The City of Brawley, and Does 51 through 100 were deliberately indifferent to Plaintiff's rights in that the City of Brawley, and Does 51 through 100 ratified the police misconduct by intentionally failing to train and discipline Officer Torres, and Does 1 through 50 and intentionally failing to adequately investigate the misconduct referenced in this complaint.

32. By reason of the above, Plaintiff suffered the aforementioned injures.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATING PLAINTIFF'S RIGHTS GUARANTEED BY ARTICLE ONE, SECTION THIRTEEN OF THE CALIFORNIA CONSTITUTION BY UNREASONABLE SEARCH AND SEIZURE

33. Plaintiff incorporates by reference paragraphs 1 through 32 as if fully set forth herein.

34. The unlawful assault, battery, and detention of Luis Gaytan by Officer Torres and Does 1-50, inclusive, was unreasonable and amounted to an unlawful seizure prohibited by Article One, Section Thirteen of the California Constitution and redressible under section 52.1 of the California Civil Code.

FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR BATTERY

35. Plaintiffs incorporates by reference paragraphs 1 through 35 as if fully set forth herein.

36. The touching of Plaintiff by Officer Torres and Does 1 through 50, inclusive, was intentional, harmful and offense, unjustified, nonconsensual, and injurious.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR FALSE IMPRISONMENT

37. Plaintiff incorporates by reference paragraphs 1through 36 as if fully set forth herein.

38. Officer Torres and Does 1 through 50 intentionally, unlawfully and without justification or consent deprived Plaintiff of his liberty for an appreciable period of time thereby causing him injuries.

SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

39. Plaintiffs incorporates by reference paragraphs 1 through 38 as if fully set forth herein.

40. Officer Torres and Does 1 through 50 intentionally inflicted serious emotional distress on Plaintiffs by outrageous conduct causing plaintiffs injuries, including severe emotional distress.

PRAYER

Wherefore, Plaintiff prays for the following:

1. General damages according to proof;

2. Special damages according to proof;

3. As to non-government entity defendants, Punitive Damages sufficient to punish defendants and deter them from similar conduct in the future in an amount not less than three times the amount of the general and special damages.

4. Attorneys fees according to section 1988 of Title 42 of the United States Code, section 794a of Title 29 of the United States Code and other relevant authority;

5. Costs; and

6. Such additional relief as the court deems proper.

Dated: December 17, 2007

Luis Gaytan
Plaintiff Appearing In Pro. Per.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury as to all matters so determinable.

Dated: December 17, 2007

Luis Gaytan
Plaintiff Appearing In Pro. Per.

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

145610 - BH

December 17, 2007
14:58:47

Civ Fil Non-Pris
USAO #.: 07CV2353 CIVIL FILING
Judge..: M. JAMES LORENZ
Amount.: $350.00 CC

Total-> $350.00

FROM: CIVIL FILING
GAYTAN V. CITY OF BRAWLEY
MC AUTH# 08531B

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Luis Gaytan

(b) County of Residence of First Listed Plaintiff: Imperial, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Luis Gaytan, 803 Meadow View Ave, El Centro, CA 92243, 760/352-7601

DEFENDANTS

CITY OF BRAWLEY, OFFICER TORRES, DOE 1 though DOE 100, inclusive

'07 CV 2353 L BLM

07 DEC 17 PM 2:53

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT

Attorneys (If Known)

BY: DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 42 U.S.C. 1983

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: 12/10/2007 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 145610 AMOUNT $350 12/17/07 BH APPLYING IFP JUDGE MAG. JUDGE

CR

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.